

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL NO. 1:05cr70
(Judge Keeley)

RICHARD EARL CRAYTON, JR.,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION

On February 24, 2009, the defendant, Richard Earl Crayton, Jr. ("Crayton"), appeared in person before United States Magistrate Judge John S. Kaull for an initial appearance pursuant to a "Petition for Warrant or Summons for Offender Under Supervision," ("Petition") filed by Crayton's Probation Officer on February 13, 2009 (dkt. no.). Crayton is currently serving a three year term of supervised release, which commenced on March 16, 2007, to which he was sentenced in connection with his conviction of being a felon in possession of a firearm.

The Petition alleges that Crayton violated a mandatory condition of his supervised release requiring that he refrain from unlawful use of a controlled substance, and that he violated Special Condition No. 7, that he refrain from excessive use of alcohol and not purchase, possess, use, distribute or administer any controlled substance or any paraphernalia related to a controlled substance, except as proscribed by a physician.

In support of these allegations, the Petition states that, on February 6, 2009, Crayton's Blood Alcohol Content ("BAC") tested to

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be .093%, and, on the same date, he submitted a urine sample that was confirmed positive for marijuana. The petition further noted that Crayton had submitted two urine specimens in the past that had also tested positive for marijuana. The Probation Office did not recommend revocation, however, but instead asked that Crayton's conditions of supervision be modified to require that he participate in Alcoholics Anonymous ("AA").

At the initial appearance before Magistrate Judge Kaull, after having his rights explained to him, including his right to an attorney, Crayton spontaneously admitted on the record that he was guilty of the violations, and indicated that he has already started attending AA meetings, is in drug counseling, and was close to finding employment. In light of this admission, Magistrate Judge Kaull issued a Report and Recommendation ("R&R") finding probable cause to believe that Crayton violated the conditions of his supervision, and recommending that Crayton's supervise released not be revoked, but instead that the terms of his supervision be modified. Specifically, he recommends (1) that Crayton be required to attend AA meetings at least three times a week, obtain a "sponsor," and provide the sponsor's information to his Probation Officer as well as documentation of his meeting attendance; (2) that he be required to successfully participate in a drug

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rehabilitation and counseling program; and (3) that a work requirement be included in his terms of supervision.

Magistrate Judge Kaull additionally informed the parties that any party could file objections to the R&R within ten days of receipt, but that failure to object would waive appellate rights on the issue. No objections have been filed. Consequently, the Court **ADOPTS** the Report and Recommendation in its entirety (dkt. no. 39), and **ORDERS** that Crayton's conditions of supervised release be modified in accordance with the terms set forth in the R&R.

The Clerk is directed to transmit a copy of this Order to the defendant, counsel of record, the Probation Office, and all appropriate agencies.

Dated: March 18, 2009.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE